

LYONS & FLOOD, LLP
65 W. 36th Street, 7th Floor
New York, NY 10018
(212) 594-2400

Attorneys for Defendant
MEDITERRANEAN SHIPPING COMPANY, S.A.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

LIBERTY MUTUAL GROUP INC.
as subrogee of BODGER SEEDS, LTD.,

Plaintiff,

- against -

MEDITERRANEAN SHIPPING COMPANY S.A.,

Defendant.
-----X

ECF CASE

08 Civ. 00223 (JSR)

**AFFIRMATION OF
EDWARD P. FLOOD
IN FURTHER SUPPORT OF
MOTION FOR
SUMMARY JUDGMENT**

EDWARD P. FLOOD, an attorney duly admitted to practice law before
this Court, affirms the following under the penalties of perjury under 28 USC § 1746:

1. I am an attorney at law and a member of the firm of Lyons &
Flood, LLP, attorneys for Defendant MEDITERRANEAN SHIPPING COMPANY, S.A.
("MSC"), and I have personal knowledge of the facts contained herein.

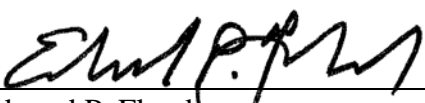
2. This Affirmation is respectfully submitted in further support of
MSC's motion for summary judgment requesting a judicial determination that MSC is
not liable for unavoidable sweat damage to 648 bags of flower seeds, and for such other,
further relief, as this Court may deem just and proper.

3. Annexed to this Affirmation as Exhibit A is a copy of plaintiff's
Expert Disclosures with respect to plaintiff's expert surveyor, Dennis Berri of Vericclaim
Inc.

4. Annexed to this Affirmation as Exhibit B is a copy of defendant's Expert Disclosures with respect to defendant's expert surveyor, Capt. Arun Jolly of Techno Marine Services.

The foregoing is true and correct to the best of my knowledge under the penalty of perjury.

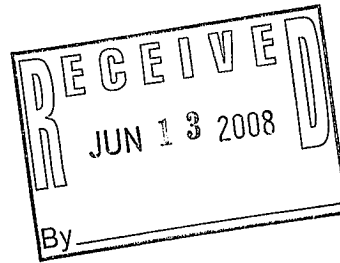
Executed on: August 28, 2008


Edward P. Flood

U:\FLOODDOC\2549114\Motions\Reply to Plaintiff's Response\Aff - Flood.doc

EXHIBIT A

BADIAK & WILL, LLP
Attorneys for Plaintiff
106 Third Street
Mineola, New York 11501
(516) 877-2225
Our ref.: 07-J-011-LS



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
LIBERTY MUTUAL GROUP, INC.,
As subrogee of BODGER SEEDS, LTD.

Plaintiff,

08-CV-00223 (JSR)

**DISCLOSURE OF
EXPERT TESTIMONY**

- against -

MEDITERRANEAN SHIPPING
COMPANY, S.A.,

Defendant.
-----X

Plaintiff, LIBERTY MUTUAL GROUP, INC. As subrogee of BODGER SEEDS, LTD.,
pursuant to the Federal Rules of Evidence and Federal Rules of Civil Procedure set forth as follows:


The plaintiff will call the following witness as an expert:

1. Dennis Berri.
2. Mr. Berri's report containing his opinions and reference to the data and information used
as basis thereof is attached hereto.

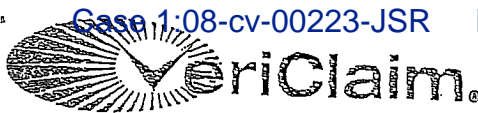
3. Mr. Berri's qualifications and publications are annexed hereto. Information regarding compensation has been requested and will be provided as soon as it is received.

DATED: Mineola, New York
June 10, 2008

BADIAK & WILL, LLP

By: 
LISA A. SCOGNAMILLO
Attorneys for Plaintiff
106 Third Street
Mineola, New York 11501-4404
(516) 877-2225
Our ref. 07-J-011-LS

TO: LYONS & FLOOD
Attorneys for Defendant
Mediterranean Shipping Company, S.A.
65 West 36th Street, 7th Floor
New York, New York 10018
(212) 594-2400
Attn. Edward P. Flood, Esq.



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MARINE CARGO SURVEY REPORT NO. LAX07288500/TMS/DWB

Examined For The Account Of Whom It May Concern

At The Request Of

Liberty International Underwriters
55 Water Street, 18th Floor
New York, NY 10041
Your Reference No.: Bodger Seeds/
LIU #4NMAR-99016

RE: Vessel : "MSC ILONA" V.0701A
Arrival : Long Beach, California; on or about April 4, 2007
Bill of Lading No. : TANG/LONG BEACH; No. MSCUTA011430
Container No. : MSCU1550902
Shipment : 648 Bags of Flower Seeds
Assured : Environmental Seed Producers
Policy No. : APPOMCSE018791006

THIS IS TO CERTIFY THAT:

BACKGROUND:

Survey was requested on April 13, 2007, by Fred Fernandez of Liberty International Underwriters.

At the time of assignment, no dollar amount of loss was provided to us. It was reported that the stated shipment had suffered water damage.

SHIPMENT PARTICULARS:

Shipment: 648 Bags of Flower Seeds, Weighing 15,969.5 Kilos:

Item No.	Item Description	Qty in Kilo	Number Of Bags	Bag Number
19023	Tropaeolum Maj. Scarlet Gleam	500.00	20	1-20
19135	Zinnia El. Tetra State Fair Mix	121.00	5	21-25
17948	Tagetes Pat. Brocade Mix	30.00	3	26-28
19028	Zinnia El. Dahliabl. Canary Bird	80.00	4	29-32
17947	Tagetes Pat. Nana Petite Yellow	49.00	4	33-36
19022	Tropaeolum Maj. Golden Gleam	426.00	17	37-53
19025	Tropaeolum Nanum Alaska Mix	327.00	13	54-66
19015	Tropaeolum Nanum Empress of India	669.00	29	67-95
19027	Tropaeolum Maj. Cherry Rose	193.50	8	96-103
19131	Zinnia El. Willy Rogers	79.00	4	104-107
19026	Tropaeolum Maj. Tall Sgt. Mix	641.00	26	108-133
19024	Tropaeolum Maj. Glorious Gleam Mix	242.00	10	134-43
19014	Tropaeolum Nanum Whirly Bird Mix	500.00	20	144-163
17939	Thunbergia Alata Mix	112.00	5	164-168
17950	Tropaeolum Maj. Dwarf Jewell Mixed	12,000.00	480	169-648

SURVEY REPORT NO. LAX07288500/TMS/DWB PAGE NO. 3

Invoice No: 48 dated January 3, 2007; US\$63,688.13 basis for the entire shipment.

Shipper: Maua Arusha Ltd.
P.O. Box 15002
Arusha, Tanzania

Consignee: Environmental Seed Producers
1851 West Olive Avenue
Lompoc, CA 93436

TRANSIT DETAILS:

The shipment was loaded onboard the M/V "ROYAL ZANZIBAR" V.56R on January 26, 2007, in the Port of Tanga, Tanzania and transported to Long Beach, arriving on April 4, 2007. The shipment had been transloaded onboard the M/V "MSC ILONA" V.0701A; however, we were unable to determine the port or date of the transload.

EXCEPTIONS:

No exceptions were taken at the time of delivery.

SURVEY / INVESTIGATION FINDINGS:

Attendance Date and Location:

- April 17, 2007 at Environmental Seed Producers, 1851 West Olive Avenue, Lompoc, CA 93436

Parties in Attendance:

- Capt. Arun Jolly, Techno Marine Services on behalf of Carrier's interests.
- Ms. Anita Laemoa of Environmental Seed Producers
- Dennis Berri, Senior Surveyor, VeriClaim, Inc., on behalf of Underwriter's interests.

NARRATIVE:

Subsequent to receiving this assignment, contact was made with the Ultimate Consignee and an appointment was arranged to complete a joint survey with the carrier's surveyor on April 17, 2007. Upon arrival at the Consignee's facility, we were escorted to the warehouse, where the shipment was being held, pending our arrival. At that time we found a total of 648 bags containing various types of flower seeds as seen in the attached **Photographs Numbered 1 through 24**. It was noted that the packaging utilized was polystyrene woven plastic bags, which were double sewn closed. No inner lining was utilized within the woven plastic bags. Initial examination of the bags showed signs of rust marks on the exterior of numerous bags, along with water staining. We also noted signs of water condensation within the shrink-wrap, which was holding the bags in place on wood pallets, where they were being stored on.

Initially, we noted a number of different types of style species and seeds to be included in these shipments. The following is a breakdown of the quantity of bags per species:

Item No.	Item Description	Qty in Kilo	Number Of Bags
19023	Tropaeolum Maj. Scarlet Gleam	500.00	20
19135	Zinnia El. Tetra State Fair Mix	121.00	5
17948	Tagetes Pat. Brocade Mix	30.00	3
19028	Zinnia El. Dahliafl. Canary Bird	80.00	4
17947	Tagetes Pat. Nana Petite Yellow	49.00	4
19022	Tropaeolum Maj. Golden Gleam	426.00	17
19025	Tropaeolum Nanum Alaska Mix	327.00	13
19015	Tropaeolum Nanum Empress of India	669.00	29
19027	Tropaeolum Maj. Cherry Rose	193.50	8
19131	Zinnia El. Willy Rogers	79.00	4
19026	Tropaeolum Maj. Tall Sgt. Mix	641.00	26
19024	Tropaeolum Maj. Glorious Gleam Mix	242.00	10
19014	Tropaeolum Nanum Whirly Bird Mix	500.00	20
17939	Thunbergia Alata Mix	112.00	5
17950	Tropaeolum Maj. Dwarf Jewell Mixed	12,000.00	480

It was noted that there was actually only four (4) types of actual species; however, that the different item numbers are different colors and variations of those species. We therefore had the Consignee open up a random sampling of each type of seed in an effort to ascertain the condition of the seeds within the plastic bags. The first item examined was the Tropaeolum (Renuncula). Illustrations of the seeds, which were found in the sampling of those bags, can be seen in **Photographs Numbered 4 through 15, 17 and 18**. It was noted the seeds had experienced contact with moisture, causing the seeds to shrink and become a dark color, as well as bunching together and becoming moldy to varying degrees.

The second type of seeds examined consisted of the Zinnia. Illustrations of the condition of this particular seed and sampling examined can be seen in **Photograph No. 16**. No signs of obvious damage were noted to this particular seeds; however, the Consignee stated that the seeds did feel slightly wet to the touch and may have been affected.

The third type of seed, which was examined from the sampling, was from the Tropaeolum species. Illustrations of the condition of this species can be seen in **Photographs Numbered 19 and 20**. No signs of obvious damage were noted to the seed; however, once again the Consignee expressed concern as to the fact that the seeds felt slightly wet to the touch.

The fourth and last type of seed, which was sampled consisted of the Tagetes, which was also known as Black Lily. Illustrations of the condition of that seed can be seen in **Photographs Numbered 21 through 24**. Once again, we noted no signs of obvious damage to the seed; however, the Consignee was concerned that the seeds felt moist to the touch.

During our conversations with the Consignee, we inquired as to whether the contents of the bags can be skimmed with the portion of the seeds, which were obviously affected by moisture being removed with the balance of the shipment being utilized for its intended purpose. The Consignee stated the only way that they would be able to evaluate the condition of the seed would be to take a random sampling from good bags and bad bags and send them to a lab and have them tested for germination capabilities. Apparently, the laboratory uses chemicals to plant the seeds and observe the germination process to determine if the seeds were affected. The laboratory would then arrive at a percentage of the seeds, which they would consider to be non-usable, with the balance being acceptable. We therefore advised the Consignee that this should be undertaken in an effort to minimize the loss and to determine the actual extent of the damages.

Subsequent to our surveying the seeds in question, we were taken to the Consignee's office and provided with a CD of the photographs showing the condition of the load at the time of delivery. We noted that there was heavy rust stains and obvious signs of

water contact to numerous bags at the time of devanning. We also noted signs of a white residue supposedly caused due to the contact with moisture on the walls of the container. We inquired as to whether there was any obvious defects to the container at the time of delivery; at which time the Consignee advised us that they noted no signs of obvious defects; however, did comment that the majority of the wet bags were found along the walls of the container and at the rear doors.

During our conversations with Capt. Jolly, the surveyor for the carrier, we were advised that he did complete a survey of the container at the dock prior to it being loaded out onto another vessel. He further stated that the container, at the time of survey was fully loaded with an outbound load therefore, he was unable to visually examine the interior of the container. We were shown the photographs; however, he stated that he would be unable to release the photographs to us without the carrier's permission. We were provided with the name of the Claims Department and we will be contacting them in an effort to obtain copies of these photographs in question. We can state that our examination of the photographs we were being shown, showed no obvious signs of defects to the container.

Subsequent to our original survey, we have been advised by the laboratory that our sampling of the packaging proved negative, indicating that the wetting was caused by fresh water. We attached to this report a copy of the Laboratory Analysis from A.J. Edmond Company regarding the salinity of the sampling examined.

We also attached to this report a copy of the email correspondence between the Consignee and the carrier placing them on notice of claim.

We have also received the results of the laboratory tests of the seeds in question. The Consignee had dried and forwarded a sampling of the seed bags from each species to the lab for testing. The lab results showed that the Russl Minimum Germination Percentage Acceptable for the various seeds were either 60% to 65%, which varied by species. Subsequent to the test being completed, it appears that all but three (3) species type failed to meet the germination minimum qualifications. The balance of the shipment has been rejected by the Consignee.

The claim as presented by the Consignee is as follows:

Item No.	Item Description	Qty. in Kilo	Unit Price In USD	Total Amount In USD
19023	Tropaeolum Maj. Scarlet Gleam	500.00	3.78	1,890.00
17947	Tagetes Pat. Nana Petite Yellow	49.00	7.00	343.00
19022	Tropaeolum Maj. Golden Gleam	426.00	3.78	1,610.28

19025	Tropaeolum Nanum Alaska Mix	327.00	3.78	1,236.06
19015	Tropaeolum Nanum Empress of India	669.00	3.78	2,528.82
19027	Tropaeolum Maj. Cherry Rose	193.50	3.78	731.43
19131	Zinnia El. Willy Rogers	79.00	8.00	632.00
19026	Tropaeolum Maj. Tall Sgt. Mix	641.00	3.78	2,422.98
19024	Tropaeolum Maj. Glorious Gleam Mix	242.00	3.78	914.78
19014	Tropaeolum Nanum Whirly Bird Mix	500.00	3.78	1,890.00
17939	Thunbergia Alata Mix	112.00	20.90	2,340
17950	Tropaeolum Maj. Dwarf Jewell Mixed	12,000.00	3.78	45,360.00

Subsequent to receiving a Sales Authorization for the rejected portion of the shipment, the goods has been placed out for salvage bid. The highest bid being \$1,176.00. The check has been forwarded to the Consignee made payable in that amount and should be taken into consideration should any adjustment be made to this claim.

CAUSE OF DAMAGE:

Based on the documentation, the damages appear to have occurred during transit. Since we were unable to survey the empty container, we were unable to comment as to its condition, other than to state, we noted no obvious damages to it during our review of Capt. Jolly's photographs.

Based on the chloride tests completed by the laboratory, the wetting was due to contact with fresh water.

DISPOSITION:

The rejected portion of the shipment has been placed out for salvage bid and sold for \$1,176.00.

A SUMMARY OF THE LOSS:

The extent of loss can be summarized as follows, subject to the terms and conditions of the policy of insurance:

Bill of Lading No.: MSCUTA011430

Shipment: Flower Seeds

Container No.: MSCU1550902

Invoice Value \$63,688.13

Quantity Sound: 12 Bags

Quantity Damaged: 636 Bags

Type of Damage: Water damage

Disposition: The rejected portion of the shipment salvaged for \$1,176.00.

RECOVERY TABLE:

1.	
Name of Carrier:	Mediterranean Shipping Co. (USA), Inc.
Address:	420 Fifth Avenue, 8 th Floor New York, NY 10018
Notified:	Yes, on April 10, 2007, by Consignee.
Response:	Joint survey completed with Steamship Line Surveyor
Delivery Documents:	Requested, but not received
Exceptions:	No exceptions taken

There is a total of 39 Photographs depicting the conditions of the shipment at the time of our survey has been previously submitted with our Preliminary Report.

All of our actions in this matter were without prejudice and subject to the terms and conditions of the policy of insurance.

VeriClaim



Dennis Berri
Senior Marine Surveyor

Los Angeles, California
August 9, 2007

DWB:vbl



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PRELIMINARY REPORT

FIRST REPORT: April 23, 2007

To: Liberty International Underwriters
55 Water Street, 18th Floor
New York, NY 10041

From: VeriClaim, Inc.
Los Angeles, California
Dennis Berri, Senior Surveyor

RE: Vessel : "MSC ILONA" V.0701A
Arrival : Long Beach, California; on or about April 4, 2007
Bill of Lading No. : TANGA/LONG BEACH, No. MSCUTA011430
Dated January 26, 2007
Container No. : MSCU1550902
Shipment : 648 Bags of Flower Seeds
Assured : Environmental Seed Producers
Policy No. : APPOMCSE018791006
Your Reference : Please advise
No.
Our File No. : LAX07288500/TMS/DWB

Dear Sir:

This will serve as our First Report on this matter.

BACKGROUND:

Survey was requested on April 13, 2007, by Fred Fernandez of Liberty International Underwriters.

At the time of assignment, no dollar amount of loss was provided to us. It was reported that the stated shipment had suffered water damage.

SHIPMENT PARTICULARS:

Shipment: 648 Bags of Flower Seeds, Weighing 15,969.5 Kilos:

Item No.	Item Description	Qty in Kilo	Number Of Bags	Bag Number
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19028	Zinnia El. Dahliafl. Canary Bird	80.00	4	29-32
17947	Tagetes Pat. Nana Petite Yellow	49.00	4	33-36
19022	Tropaeolum Maj. Golden Gleam	426.00	17	37-53
19025	Tropaeolum Nanum Alaska Mix	327.00	13	54-66
19015	Tropaeolum Nanum Empress of India	669.00	29	67-95
19027	Tropaeolum Maj. Cherry Rose	193.50	8	96-103
19131	Zinnia El. Willy Rogers	79.00	4	104-107
19026	Tropaeolum Maj. Tall Sgt. Mix	641.00	26	108-133
19024	Tropaeolum Maj. Glorious Gleam Mix	242.00	10	134-43
19014	Tropaeolum Nanum Whirly Bird Mix	500.00	20	144-163
17939	Thunbergia Alata Mix	112.00	5	164-168
17950	Tropaeolum Maj. Dwarf Jewell Mixed	12,000.00	480	169-648

Invoice No: 48 dated January 3, 2007; US\$63,688.13 basis for the entire shipment.

Shipper: Maua Arusha Ltd.
P.O. Box 15002
Arusha, Tanzania

Consignee: Environmental Seed Producers
1851 West Olive Avenue
Lompoc, CA 93436

TRANSIT DETAILS:

The shipment was loaded onboard the M/V "ROYAL ZANZIBAR" V.56R on January 26, 2007, in the Port of Tanga, Tanzania and transported to Long Beach, arriving on April 4, 2007. The shipment had been transloaded onboard the M/V "MSC ILONA" V.0701A; however, we were unable to determine the port or date of the transload.

SURVEY / INVESTIGATION FINDINGS:**Attendance Date and Location:**

- April 17, 2007 at Environmental Seed Producers, 1851 West Olive Avenue, Lompoc, CA 93436

Parties in Attendance:

- Capt. Arun Jolly, Techno Marine Services on behalf of Carrier's interests.
- Ms. Anita Laemoa of Environmental Seed Producers
- Dennis Berri, Senior Surveyor, VeriClaim, Inc., on behalf of Underwriter's interests.

Documents Obtained:

- Copy of Ocean Bill of Lading
- Copy of Arrival Notice
- Copy of Commercial Invoice
- Copy of Packing Slip
- Copies of Broker's Importation Charges
- Copy of Phytosanitary Certificate
- Copy of Certificate of Origin
- Original Trucker's Delivery Receipt

Documents Requested:

- Written notice of claim to carrier
- Statement of Claim

Narrative:

Subsequent to receiving this assignment, contact was made with the Ultimate Consignee and an appointment was arranged to complete a joint survey with the carrier's surveyor on April 17, 2007. Upon arrival at the Consignee's facility, we were escorted to the warehouse, where the shipment was being held, pending our arrival. At that time we found a total of 648 bags containing various types of flower seeds as seen in the attached Photographs Numbered 1 through 24. It was noted that the

packaging utilized was polystyrene woven plastic bags, which were double sewn closed. No inner lining was utilized within the woven plastic bags. Initial examination of the bags showed signs of rust marks on the exterior of numerous bags, along with water staining. We also noted signs of water condensation within the shrink wrap, which was holding the bags in place on wood pallets, where they were being stored on.

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19028	Zinnia El. Dahliabl. Canary Bird	80.00	4
17947	Tagetes Pat. Nana Petite Yellow	49.00	4
19022	Tropaeolum Maj. Golden Gleam	426.00	17
19025	Tropaeolum Nanum Alaska Mix	327.00	13
19015	Tropaeolum Nanum Empress of India	669.00	29
19027	Tropaeolum Maj. Cherry Rose	193.50	8
19131	Zinnia El. Willy Rogers	79.00	4
19026	Tropaeolum Maj. Tall Sgt. Mix	641.00	26
19024	Tropaeolum Maj. Glorious Gleam Mix	242.00	10
19014	Tropaeolum Nanum Whirly Bird Mix	500.00	20
17939	Thunbergia Alata Mix	112.00	5
17950	Tropaeolum Maj. Dwarf Jewell Mixed	12,000.00	480

It was noted that there was actually only four (4) types of actual species; however, that the different item numbers are different colors and variations of those species. We therefore had the Consignee open up a random sampling of each type of seed in an effort to ascertain the condition of the seeds within the plastic bags. The first item examined was the Tropaeolum (Renuncula). Illustrations of the seeds, which were found in the sampling of those bags, can be seen in **Photographs Numbered 4 through 15, 17 and 18**. It was noted the seeds had experienced contact with moisture, causing the seeds to shrink and become a dark color, as well as bunching together and becoming moldy to varying degrees.

The second type of seeds examined consisted of the Zinnia. Illustrations of the condition of this particular seed and sampling examined can be seen in **Photograph No. 16**. No signs of obvious damage were noted to this particular seeds; however, the Consignee stated that the seeds did feel slightly wet to the touch and may have been affected.

The third type of seed, which was examined from the sampling, was from the Tropaeolum species. Illustrations of the condition of this species can be seen in **Photographs Numbered 19 and 20**. No signs of obvious damage were noted to the seed; however, once again the Consignee expressed concern as to the fact that the seeds felt slightly wet to the touch.

The fourth and last type of seed, which was sampled consisted of the Tagetes, which was also known as Black Lily. Illustrations of the condition of that seed can be seen in **Photographs Numbered 21 through 24**. Once again, we noted no signs of obvious damage to the seed; however, the Consignee was concerned that the seeds felt moist to the touch.

During our conversations with the Consignee, we inquired as to whether the contents of the bags can be skimmed with the portion of the seeds, which were obviously affected by moisture being removed with the balance of the shipment being utilized for its intended purpose. The Consignee stated the only way that they would be able to evaluate the condition of the seed would be to take a random sampling from good bags and bad bags and send them to a lab and have them tested for germination capabilities. Apparently, the laboratory uses chemicals to plant the seeds and observe the germination process to determine if the seeds were affected. The laboratory would then arrive at a percentage of the seeds, which they would consider to be non-usable, with the balance being acceptable. We therefore advised the Consignee that this should be undertaken in an effort to minimize the loss and to determine the actual extent of the damages.

Subsequent to our surveying the seeds in question, we were taken to the Consignee's office and provided with a CD of the photographs showing the condition of the load at the time of delivery. We noted that there was heavy rust stains and obvious signs of water contact to numerous bags at the time of devanning. We also noted signs of a white residue supposedly caused due to the contact with moisture on the walls of the container. We inquired as to whether there was any obvious defects to the container at the time of delivery; at which time the Consignee advised us that they noted no signs of

obvious defects; however, did comment that the majority of the wet bags were found along the walls of the container and at the rear doors.

During our conversations with Capt. Jolly, the surveyor for the carrier, we were advised that he did complete a survey of the container at the dock prior to it being loaded out onto another vessel. He further stated that the container, at the time of survey was fully loaded with an outbound load therefore, he was unable to visually examine the interior of the container. We were shown the photographs; however, he stated that he would be unable to release the photographs to us without the carrier's permission. We were provided with the name of the Claims Department and we will be contacting them in an effort to obtain copies of these photographs in question. We can state that our examination of the photographs we were being shown, showed no obvious signs of defects to the container.

RECOMMENDATIONS:

Based on our examination of the documentation provided, it appears the value of the shipment is \$63,688.13. As mentioned before, the Consignee will be testing the seeds to determine if they are damaged; if so, what the percentages of damages are apparent.

It would be our recommendation that the packaging sample, which we took from the Consignee, be tested for salt water. It was also our recommendation that the seeds be tested in effort to determine the extent of the damages in an effort to minimize the loss.

ESTIMATE OF LOSS / SUGGESTED RESERVE:

US\$8,000.00, based on our survey.

CAUSE OF DAMAGE:

Based on the documentation, the damages appear to have occurred during transit. Since we were unable to survey the empty container, we were unable to comment as to its condition, other than to state, we noted no obvious damages to it during our review of Capt. Jolly's photographs.

NOTICE OF CLAIM:

We have advised the Consignee that the carrier should be placed on notice in writing, if they had not done so, to date.

All our actions in this matter are without prejudice and subject to the terms and conditions of the policy of insurance.



Yours very truly,

VeriClaim, Inc.

A handwritten signature in black ink, appearing to read "Dennis Berri".

Dennis Berri
Senior Surveyor

DWB:vbl

DENNIS BERRI
6530 West 84th Place
Los Angeles, CA 90071
(310) 215-5061

=====

EDUCATION: California State University, Northridge, B.S. in Marketing – 1974
Santa Monica College, A.A. in Business – 1972

PROFESSIONAL EXPERIENCE:

VERICLAIM, INC. **Senior Marine Surveyor**
Los Angeles, California **2000 – Present**
Duties include surveying damage cargo and reporting findings to Principals, along with loss minimization.
Specialties include general cargo, steel, perishables, project cargo, household goods and automobiles.

PACIFIC RIM CLAIMS **Cargo Surveyor/Independent Adjuster**
Los Angeles, California **1998 – 2000**
Duties included surveying and adjusting damage cargo claims, combined with loss minimization.
Customers include airlines, steamship lines, and insurance companies.

ASSOCIATED TRANSIT SURVEYORS **Cargo Surveyor/Independent Adjuster**
Los Angeles, California **1984-1998**
This firm was created by Mr. Berri with one general partner, equally owned. Responsibilities consist of start-up of the business, including all the daily requirements to effectively operate it. The goal of the firm was the successful surveying and investigating of damage claims, combined with loss minimization. Customers include most of the U.S. flag air carriers at LAX, steamship lines and insurance companies. The position required organization and sales skills, as well as investigative and loss minimization expertise to effectively reduce the customer's exposure.

FLYING TIGERS AIRLINES **Cargo Claims Adjuster**
Los Angeles, California **1979 - 1984**
Responsibilities included investigation, adjustment and settlement of loss and damage claims at the worldwide claims center. Interaction and negotiations with U.S. Customs were completed while settling customs penalties. This position required investigative and adjusting expertise, along with independent decision making abilities to enable the efficient processing of cargo claims.

LIBERTY MUTUAL INSURANCE COMPANY **Claims Supervisor**
Long Beach, California **1974-1979**
Responsibilities included supervising three adjusters and problem solving concerning product liability losses, property damage claims, cargo losses and auto liability claims. Accounts included Reynolds Metals, StarKist, American Standard, Ford Motor Company, and ITT. The position required the ability to make far-reaching decisions independently, on a day-to-day basis.

PAN AMERICAN AIRLINES **Port Steward**
Los Angeles, CA **(1 Year)**
Duties included servicing incoming and outgoing planes with food and fresh sundry supplies.

U.S. ARMY **Military Policeman, SP/4**
(2 Years)
Duties included convoy movement control in Vietnam as a Combat M.P. and standard Military Police duties. Serves as squad leader. Received Honorable Discharge.

REFERENCES: Available upon request.

LISA A. SCOGNAMILLO
Notary Public, State of New York
No. 5011463
Qualified in Nassau County
Commission Expires Apr 19, 192011

EXHIBIT B

LYONS & FLOOD, LLP
65 W. 36th Street, 7th Floor
New York, NY 10018
(212) 594-2400

Attorneys for Defendant
MEDITERRANEAN SHIPPING COMPANY, S.A.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
LIBERTY MUTUAL GROUP INC.
as subrogee of BODGER SEEDS, LTD.,

08 Civ. 00223 (JSR)

Plaintiff,

- against -

MEDITERRANEAN SHIPPING COMPANY S.A.,

Defendant,
-----X

EXPERT DISCLOSURES

Defendant MEDITERRANEAN SHIPPING COMPANY S.A. ("MSC"), by its attorneys Lyons & Flood, LLP, provides the following as and for its expert disclosures, pursuant to Fed. R. Civ. P. 26(a)(2):

CAPTAIN ARUN JOLLY

1. Name of Expert: Captain Arun K. Jolly is a surveyor employed by Techno Marine Services ("Techno"). Techno was retained by MSC following the discharge of the subject shipment, to determine the cause and extent of any alleged damage to the subject cargo.

2. Subject Matter of Testimony: Capt. Jolly will testify regarding his participation in a joint survey of the subject cargo at the headquarters of the consignee Environmental Seeds Producers on April 17, 2007, as memorialized in the Techno

Marine Services Report prepared by Capt. Jolly ("Techno Report"). A copy of this report is attached as Exhibit A. Capt. Jolly's testimony is, in part, based on his experience and expertise as a marine surveyor.

3. Substance of Facts and Opinions: Capt. Jolly is expected to testify regarding his observations as to the condition of the subject cargo at the time of his inspection as well as his opinions regarding the cause of any alleged damage to said cargo. Capt. Jolly's observations and opinions are set forth in the Techno Report. Capt. Jolly will also comment on the tendency of seeds and similar cargo to emit moisture during long voyages at sea. The opinions which Capt. Jolly will express and the bases for them are contained in the Techno Report.

4. Qualifications: Annexed hereto as Exhibit B is a copy of Capt. Jolly's *curriculum vitae*, the contents of which are incorporated herein by reference.

5. Summary of the Grounds of Opinion: The data or other information considered by Capt. Jolly in forming his opinions includes his physical examination of the subject cargo, his knowledge and expertise in marine surveying, his custom and practice, and his experience.

6. Prior Expert Testimony and Compensation: Capt. Jolly has testified as an expert at trial in the following cases:


1. Vision Air v. M/V NATIONAL PRIDE, et al.
U.S.D.C. – D. of Northern California, 1998.
2. Angelo and Theresa Messina v. Scindia Steam Navigation Co. Ltd.
U.S.D.C. – S.D.N.Y., 1980

Techno's fees for attendance at the joint survey, reviewing the recommended repairs and preparing their report was \$1,191.00. If the case proceeds to trial, the cost of Capt. Jolly's trial appearance is \$100.00 per hour.

Dated: July 1, 2008

LYONS & FLOOD, LLP
Attorneys for Defendant
MEDITERRANEAN SHIPPING
COMPANY S.A.

By:


Edward P. Flood (EPF-5797)
65 West 36th Street, 7th Floor
New York, New York 10018
(212) 594-2400

TO: BADIAK & WILL, LLP
Attorney for Plaintiff
106 Third Street
Mineola, New York 11501
Attn: Alfred J. Will, Esq.
Firm Ref: 07-J-011-AW

U:\FLOODDOC\2549114\Pleadings\Expert Disclosure.doc

CERTIFICATE OF SERVICE

Erika Tax declares and states that:


I am not a party to these actions, am over 18 years of age and reside in Queens, New York. I am an employee with Lyons & Flood, LLP, attorneys for MEDITERRANEAN SHIPPING COMPANY S.A., with offices at 65 West 36th Street, 7th Floor, New York, New York 10018.

On July 1, 2008, I served true copies of the Expert Disclosures upon:

BADIAK & WILL, LLP
106 Third Street
Mineola, New York 11501
Attn: Alfred J. Will, Esq.

by U.S. Mail, first-class postage pre-paid, addressed to the last known address of the addressees as indicated above.

Executed on: July 1, 2008



Erika Tax

EXHIBIT A

Techno Marine Services

Marine Surveyors and Consultants

P.O. Box 1732

San Pedro, CA 90733-1732

● Phone: 714-816-8735 ● Fax: 714-826-4080

SURVEY REPORT NO. 20 – 3338

THIS IS TO CERTIFY that the undersigned did at the request of Messrs. Mediterranean Shipping Company, Marine Claims Department, New York, attend investigation and inspection of the alleged wetting damage to the shipment and condition of the container and advise as follows:

We were advised that the consignee had informed MSC Lines that the shipment of flower seeds was received damaged by water.

MSC REF.:	GVA 2007- 5152 – 561 - 2 / T - 2382
VESSEL:	MSC ROYAL ZANZIBAR Voyage 56A
LOADED AT:	TANGA, TANZANIA
DATE OF LOADING:	JANUARY 26, 2007
ARRIVAL LONG BEACH:	APRIL 5, 2007
BILL OF LADING:	MSCUTA011091 Dated January 26, 2007
CONTAINER:	MSCU1550902
SHIPMENT:	648 BAGS FLOWER SEENDS
SHIPPER:	MAUA ARUSHA LTD. ARUSHA, TANZANIA
CONSIGNEE:	ENVIRONMENTAL SEED PRODUCERS 1851 W. OLIVE AVENUE. LOMPOC, CA 93436
NATURE OF SURVEY:	CONSIGNEE REPORTED WETTING DAMAGE ON THE SHIPMENT RESULTING IN CLUMPING OF SEEDS, MOLD, DISCOLORATION AND DETERIORATION IN QUALITY.
SURVEY DATE:	APRIL 13 & 17, 2007

Techno Marine Services

Marine Surveyors and Consultants

P.O. Box 1732

San Pedro, CA 90733-1732

● Phone: 714-816-8735 ● Fax: 714-826-4080

SURVEY REPORT NO. 20 - 3338

SURVEY LOCATION:

SSA TERINAL
PIER A STREET, LONG BEACH, CA

ENVIRONMENTAL SEEDS PRODUCERS W'HOUSE
1851 WEST OLIVE AVENUE
LOMPOC, CA 93426

SURVEY ATTENDED BY:

TECHNO MARINE SERVICES CAPT. ARUN K. JOLLY

CONSIGNEE'S REPRESENTATIVE MS. ANITA M. LAEMOA

MARINE UNDERWRITER SURVEYOR MR. DENNIS BERRI

SURVEYOR'S NOTES

On April 11, 2007 our office was advised by Mediterranean Shipping Lines, Marine Claims Department, New York, that the consignee had reported wetting damage on the shipment of Flower Seeds.

We immediately contacted the consignee, Environmental Seed Products, Ms. Anita M. Laemoa and were advised that the container was devanned on April 10, 2007 and returned to the terminal.

We then contacted the SSA Terminal and were advised that the container was sent out on the next deployment to load an out bound shipment.

SSA Terminal was requested to advise our office as soon as the loaded container was in gated into the terminal.

We also advised the consignee to contact their Insurance company Liberty Mutual in case they wish to hold a joint inspection.

April 13, 2007 we were advised by SSA Terminal that the container was in the terminal and was scheduled to be loaded onto the MSC Debra V. 713 for discharge port KHH.

Hence we proceeded to the terminal on April 13, 2007 at 1030 hours and inspected the loaded and sealed container. The container was found to be in satisfactory condition.

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SURVEY REPORT NO. 20 - 3338

Upon receiving the request by the marine underwriter surveyor to inspect the container on April 14, 2007 we contacted the terminal and were advised that the container had already been stowed on board the vessel and would not be available for a joint inspection here in Los Angeles.

On April 17, 2007 we proceeded to Environmental Seeds Producers in Lompoc CA and inspected the nature and extent of damage along with Mr. Dennis Berri, surveyor representing the marine underwriters of the shipment.

CONTAINER MSCU1550902

Type: 20 foot enclosed end loading with corrugated metal panels.

Date of Mfg.: 10/2002

Location: On the ground at the Pier A Street Terminal location C 149.

Seal: The container was sealed with seal number PCR LLC 0207050.

Condition: The container was found to be in satisfactory condition as from what could be seen. We were able to inspect the door panels, the front panels and the right side panels.

The door rubber gaskets were in good condition.

Two side vents on the right side panels in the front and door end were seen partially sealed with cellophane tape.

INSPECTION OF THE SHIPMENT ON APRIL 17, 2007 ALONG WITH MR. DENNIS BERRI, SURVEYOR REPRESENTING THE MARINE UNDERWRITERS

At time of our inspection also present was Mr. Joe Apoliner, warehouse receiving personnel and Ms. Anita Laemoa.

According to Mr. Joe Apoliner, the shipment was devanned on April 10, 2007. There was no apparent visible damage to the container.

During devanning the shipment they noticed streaks of condensed beads of water along the side panels of the container, being more pronounced in the after half of the container.

The sides of the bags that were in contact with the condensed water inside the side panels, were wet and had rust stains.

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SURVEY REPORT NO. 20 - 3338

The top of the upper most tier of bags was also seen to be slightly damp to the touch.

We were advised that the bags were stowed to a height of approximately 5 feet and there was a 3 feet void under the roof panels.

The container was returned to the trucker the same day.

During our inspection we noticed some bags had wet stains along either one end or on the side.

The seeds in the wet stained bags were inspected. The stained portion of the bags was cut and the seeds directly adjacent to the wet stains were seen to be wet and discolored and moldy.

We inspected also seeds in bags that did not have any apparent visible wet stains. The seeds in these bags were found to be in satisfactory condition. The seeds were dry and there was no discoloration or shrinkage.

The shipment comprised of the following seed varieties:

Item	Description	Qty Kg	Number Bags
19023	Tropaeolum Maj. Scarlet Gleam	500.00	20
19135	Zinnia El. Tetra State Fair Max	121.00	5
17948	Tagetes Pat. Brocade Mixed	30.00	3
19028	Zinnia El. Dahliafil. Canary Bird	80.00	4
17947	Tagetes Pat. Nana Petite Yellow	49.00	4
19022	Tropaeolum Maj. Golden Gleam	426.00	17
19025	Tropaeolum Nanum Alaska Mix	327.00	13
19015	Tropaeolum Nanum Express of India	669.00	29
19027	Tropaeolum Maj. Cherry Rose	193.50	8
19131	Zinnia El. Willy Rogers	79.00	4
19026	Tropaeolum Maj. Tall Sgl. Mixed	641.00	26
19024	Tropaeolum Maj. Glorius Gleam Mix.	242.00	10
19014	Tropaeolum Nanum Whirlybird Mix	500.00	20
17939	Thunbergia Alata Mix	112.00	5
17950	Tropaeolum Maj. Dwarf Jewell Mix	12,000.00	480
Total		15,969.50 Kg	648 bags

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SURVEY REPORT NO. 20 - 3338

According to the commercial invoice issued by Maua Arusha Ltd., Arusha Tanzania issued to Environmental Seeds Producers, invoice number 48 dated January 3, 2007 the value of the shipment was stated to be USD \$63,688.13.

We inspected the following seeds:

Tropaeolum The seeds adjacent to the wet stains on the bags were mold and clumped together. On account of the moisture in the bags some of the seeds were seen brown discolored and had shrinkage.

The seeds in the bags that did not have any mold stains appeared to be in satisfactory condition.

Zinnia The bags inspected did not have any stains. The seeds were found to be in apparent visible satisfactory condition.

Thunbergia Same as above.

Tagetes Same as above.

SILVER NITRATE TESTS

The wet stained portion of the bags were tested with silver nitrate solution and the tests proved **negative** as to the presence of chlorides.

DISCUSSIONS

During our discussions with the consignee, Ms. Anita Laemoa we were advised that they would be sending samples of the different varieties of the seeds to the laboratory to ascertain the extent of damage to the seeds on account of the same being subjected to moisture.

It was recommended that samples also be sent from the bags that were not directly affected by moisture especially those stowed within the container away from the panels.

CONCLUSION

Based on our inspection and information provided to our office we conclude by stating that the shipment was apparently effected by condensation within the confines of the container resulting from the inherent moisture within the shipment of different varieties of flower seeds.

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SURVEY REPORT NO. 20 - 3338

The seeds in the bags that were directly in contact with the side panels of the container sustained wetting from the condensed beads of water dripping down the side panels and the seeds adjacent to the wet stains on the bags were found to be wet, moldy, clumped together and discolored.

There did not appear to be any damage to the container as seen during our inspection at the SSA Terminal Long Beach after it was in gated into the terminal loaded with an out bound shipment.

The Phytosanitary Certificate is dated January 8, 2007, the invoice is dated January 9, 2007 and the master bill of lading is dated January 26, 2007.

The shipment was received by the consignee on April 10, 2007.

Hence the shipment was in the container for approximately 90 days.

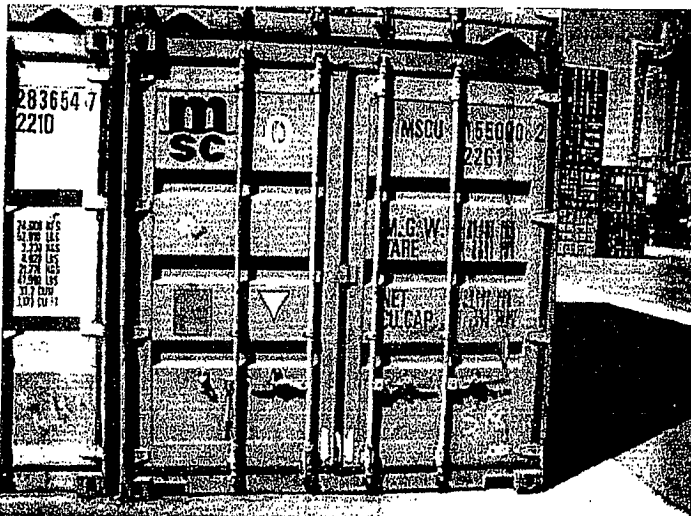
We estimate damage to the seed of *Tropaeolum* in some of the bags that were stowed adjacent to the side panels.

Each bag measured 30"x22"x8". Hence we estimate damage to approximately 128 bags of *Tropaeolum* Seeds (each bag containing 25 kgs) out of the 648 bags that were directly in contact with the side panels amounting to approximately \$11,000.00.

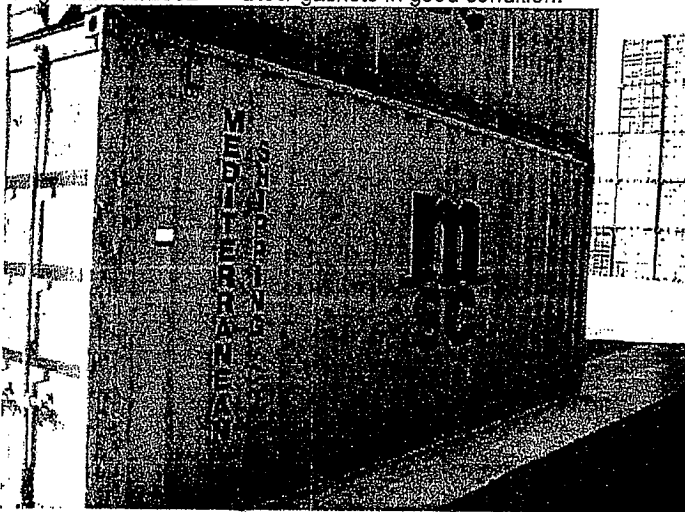
This report is based only on the facts presently known to the surveyor in attendance and is submitted without prejudice to the rights of whom it may concern.

The right to amend or supplement this report should additional information be made available is reserved.

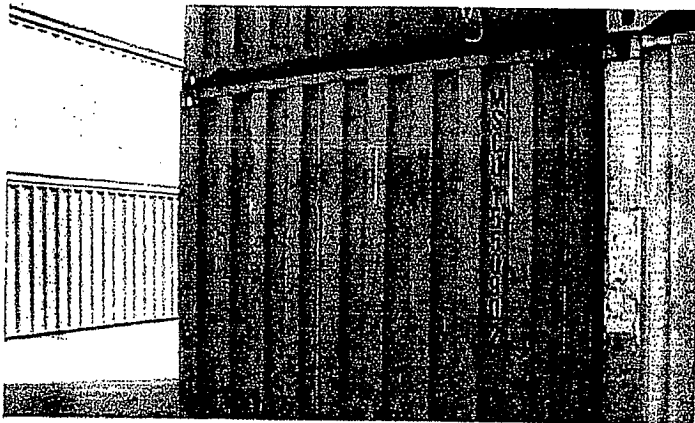
Techno Marine Services
Issued at Los Angeles
Dated April 20, 2007

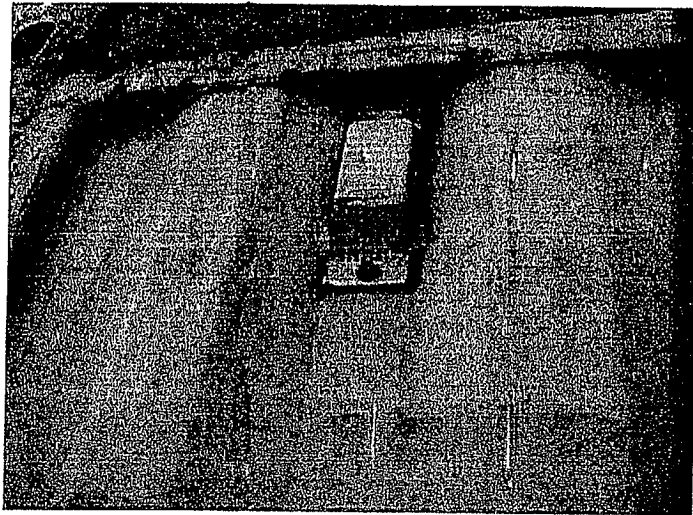


MSCU1550902 Inspected at SSA Terminal Long Beach on April 13, 2007
Mfg. Date 10/2002 Door gaskets in good condition.

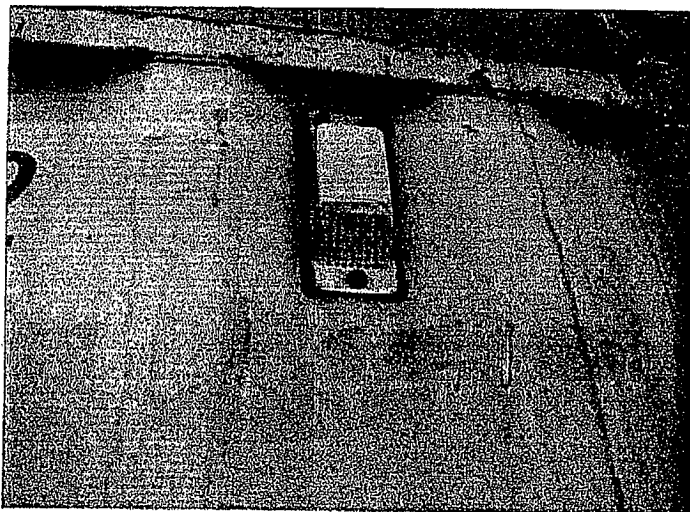


No damage to panels. Container in apprent visible satisfactory conditon.





Side vents partially taped over.

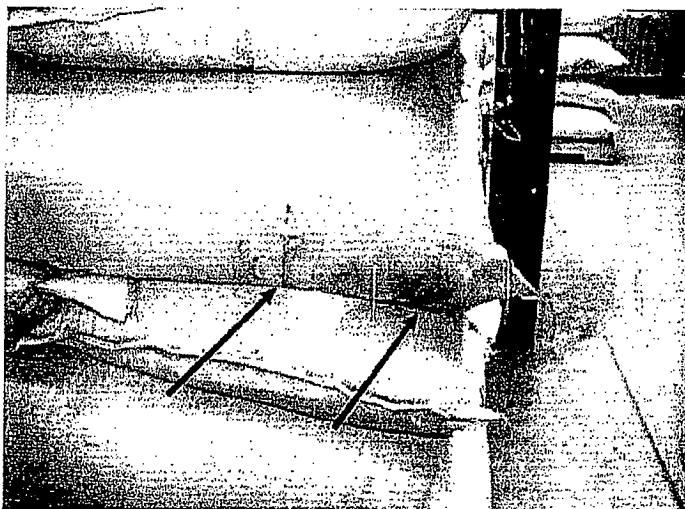


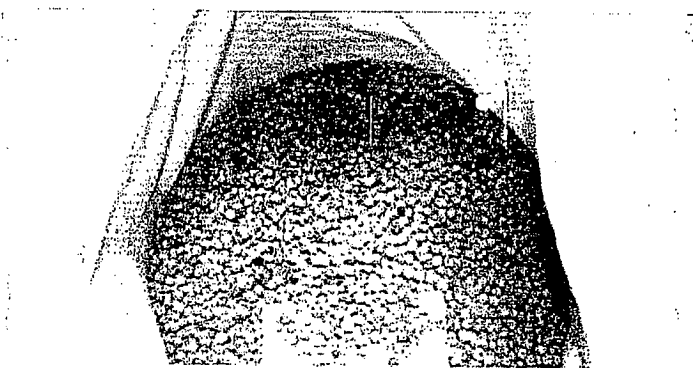
INSPECTION OF SHIPMENT AT ENVIRONMENTAL SEED PRODUCTS
LOMPOC CA ON APRIL 17, 2007





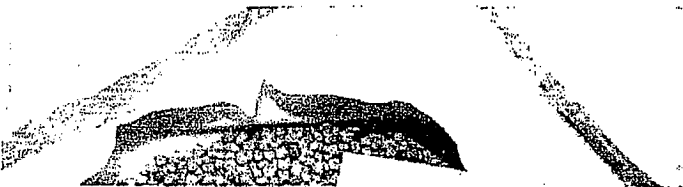
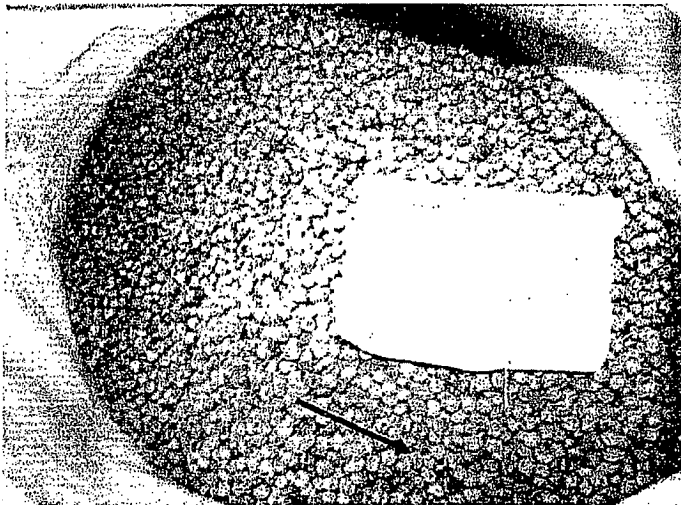
Wet stains on side of bags

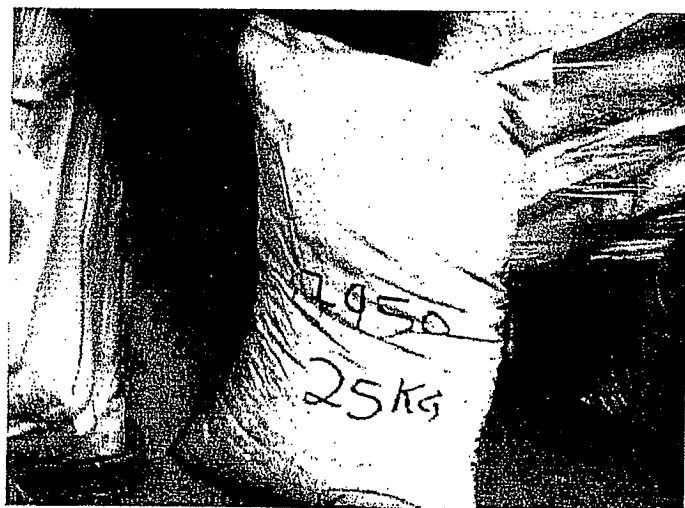
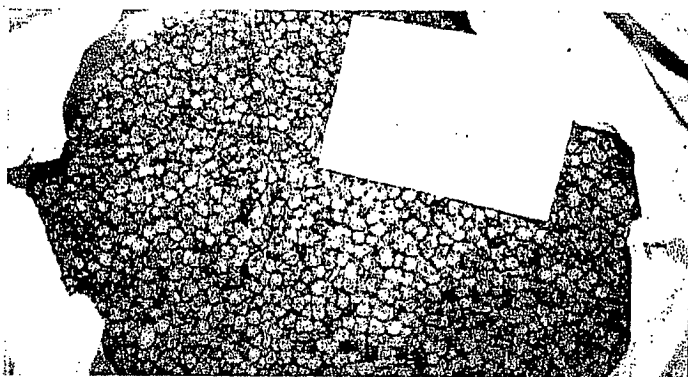


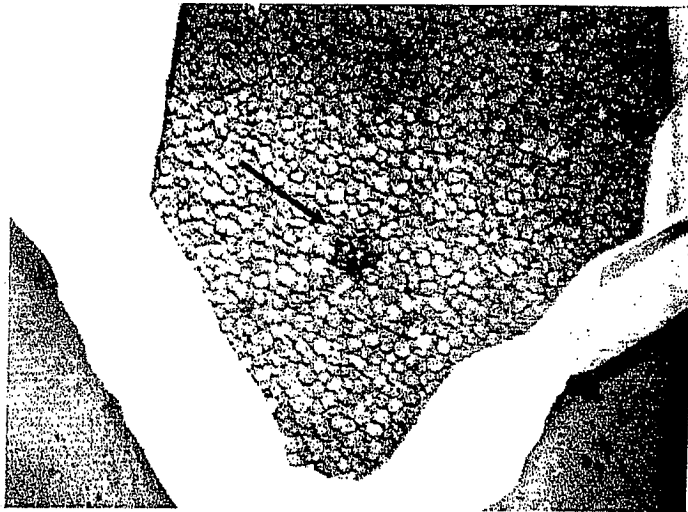




Tropaeolum seeds in wet stained bags partially moldy and shrunk

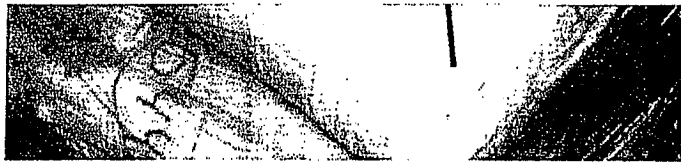




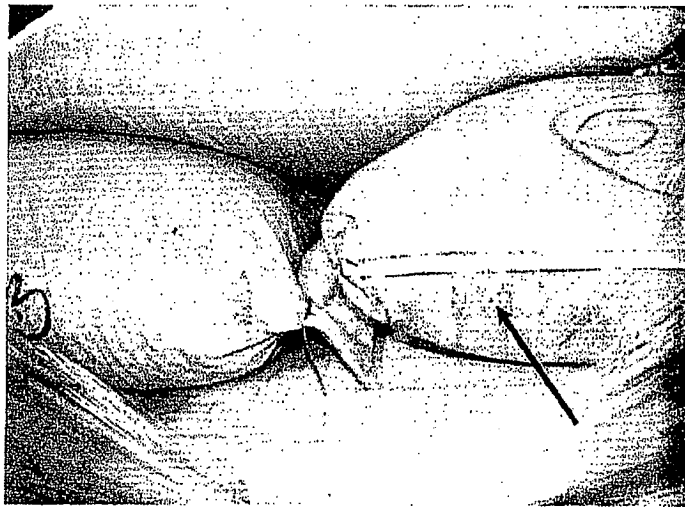
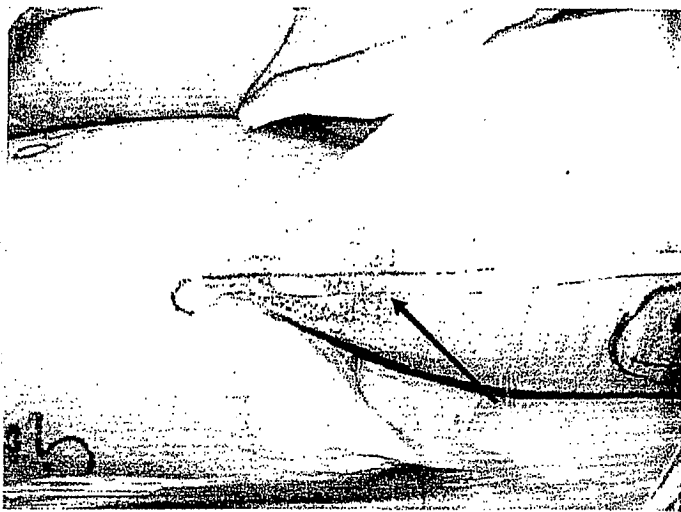


Wet clumps of seeds



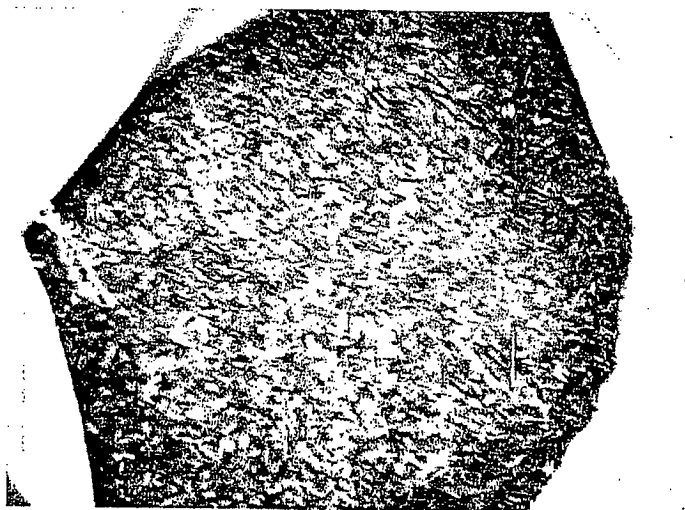


Wet Stains on Bags

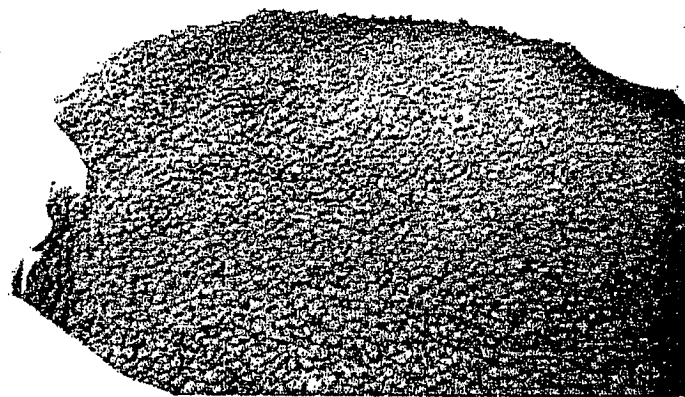




Seeds wet near stains on bags. Moldy



Zinnia Seeds Dry & In Good Condition

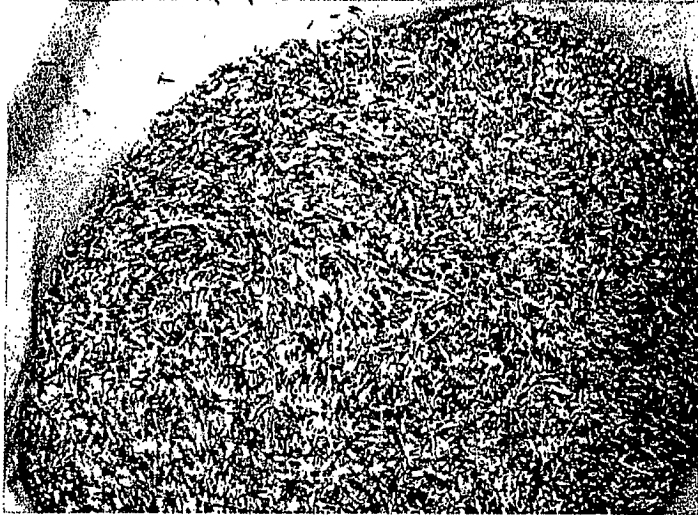


Thunbergia Seeds in good conditon.





We stains on side of bags



Tangetas Seeds in good condition.

EXHIBIT B

Capt. Arun K. Jolly
Techno Marine Services
P.O. Box 1732
San Pedro, Ca 90733

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Facsimile: (714) 826-4080
Cell Phone: (310) 344-1240
Pager: (310) 730-4788
E-mail address: Jollytms@aol.com

PRINCIPAL SURVEYOR:

TECHNO MARINE SERVICES

EXPERIENCE:	1990-1996	EWIG INTERNATIONAL MARINE CORP. <i>General Manager & Principal Marine Cargo Surveyor</i> GERMANISCHER LLOYD (U.S.A.), INC. <i>Non Exclusive Classification Surveyor</i>
	1987-1990	ASSOCIATED INDEPENDENT MARINE SURVEYORS <i>Staff Marine Cargo Surveyor</i>
	1966-1986	MERCHANT SHIPS UNLIMITED TONNAGE <i>Master / Ship Captain</i>
	1964-1966	TRAINING SHIP DUFFERIN <i>Cadet - Maritime Academy</i>

All types of General, Containerized & Bulk Cargo, IMCO Class, Heavy Lifts, Project Cargo, Transtainer Cranes, Bulk & Bagged Grain Commodities as per NCB Regulations, Various Steel Products, Bulk Iron Ore, Fertilizer, Logs & Sawn Timber, Chemicals - Hazardous & Non Hazardous, Pharmaceuticals, Fresh Produce, Refrigerated Atmosphere Controlled Containers & Shipments, House Hold Items including Antiques, Garments, Machinery & Electronic & Electrical Items, Reefer Vessels, etc. Attending vessels during loading and discharge operation to prevent losses and inspect damages if any during transportation and handling.

Performed Hull & Machinery damage & Classification Surveys on behalf of Germanischer Lloyds (U. S.A.) Inc.

Assisted as Super Cargo on chartered vessels, Masters in Cargo Handling and economic expedition of vessels. Conducted Stevedore Injury Investigations on board vessels. Performing various Cargo Surveys and Loss Investigations for Foreign & Domestic steamship lines and underwriters and acting on their behalf dealing with public adjusting companies. Testified in court cases.

Handled large project cargo shipments, worked closely with the CATS (Cargo Apprehension Team) Los Angeles, assisted in salvage etc. Retained by attorneys as consultants, testified in Admiralty Courts. Conducted condition survey of ships for underwriting risk.

Certified by IICL for container & Chassis examination during on hire and off hire.

Consultant for various clients on Loss Prevention and Loss Assessment.

Presently representing the interest of various Insurance Companies, ship owners and P & I clubs.

Have handled damage claims in all products including electronic and electrical items for the past 18 years.